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COMMISSION REPORT NO. 1975-1

TO THE GENERAL ASSEMBLY OF MARYLAND

SUBJECT: Revised Article on Commercial Law [H.B. 26]

I. CONTINUATION OF CODE REVISION.

The Commercial Law Article is a result of the continuing revision of the Annotated Code of Maryland undertaken by the Commission to Revise the Annotated Code. This process was inaugurated during the First Extraordinary Session of 1973 when the Agriculture, Courts and Judicial Proceedings, and Natural Resources Articles were enacted; it continued during the Regular Session of 1974 with enactment of the Real Property and Estates and Trusts Articles. These five articles were a formal revision as mandated by the guidelines established by Governor Mandel in July 1970 and included an improved scheme or organization, elimination of obsolete or unconstitutional provisions, resolution of inconsistencies and conflicts in the laws, and general improvement of language and expression. A more detailed description of the purposes of Code revision and the complete revision scheme is contained in the Revisor's Manual of the Governor's Commission to Revise the Annotated Code (Second Edition - 1973). Copies of the Manual may be obtained in the offices of the Secretary of the Senate and the Chief Clerk of the House, who will furnish one to any member

on request.

The basic thrust of the Commission's work is formal and not substantive change. Nevertheless, at some points in its work, it becomes necessary to make recommendations which involve the substance of the laws. In a sense, the elimination of an obsolete provision is a substantive change. Also, where the Commission has discovered inconsistencies or gaps in the laws, it sometimes has made substantive recommendations in an effort to rectify the situation. This follows the Governor's directive to eliminate inconsistencies and conflicts.

In every such case, the revisor's notes attached to the appropriate section explain the change and the reasons for it. Changes of this kind also are noted in this report.

Sometimes the Commission identified problems involving such fundamental policy that it felt that they should be called to the attention of the General Assembly for action. These problems also are mentioned in the revisor's notes and in this report.

II. FORM OF REVISION BILLS.

The revised articles introduced during the 1975 regular session of the General Assembly conform to the organizational format and numbering system used in the previously revised articles. Accordingly, they will be published as separate volumes and, in accordance with Article 1, §25 of the Code, will be cited by name.

Within each article, a standard numbering system is used. This consists of one or more digits to the left of a dash and three or more digits to the right of a dash, essentially the same system now used in present Articles 21, 66 1/2, 93, and 95B of the Code.

The number or numbers to the left of the dash designate the title within the article. The first number or numbers to the right of the dash designate the subtitle. The remaining digits designate the section within the subtitle. Thus, §12-302 of the Commercial Law Article is the second section in Subtitle 3 of Title 12 of that article.

The Code revision bills introduced at the 1975 session reflect this system of organization and numbering. Each bill is arranged in a similar format. With the exception of the Uniform Commercial Code, which constitutes the first ten titles to the Commercial Law Article, the text of each article is printed in all capital letters as though it were all new material, but in most instances references to the present Code indicate that changes are largely stylistic.

Each section or subsection of the proposed revised article is followed by a revisor's note which explains the changes, if any, made with respect to present law. These notes facilitate comparison of the revised article with the present law. It shows the relationship between present and proposed Code provisions and vice versa.

Each revised article, if enacted, becomes effective on July 1, 1975.

III. THE COMMERCIAL LAW ARTICLE.

This report is concerned specifically with the proposed Commercial Law Article. The proposed article includes substantially all provisions of the public general laws dealing with commercial transactions, trade and credit regulations, consumer protection, debt collection, statutory liens on personal property, disposition of unclaimed property, and bills of lading and warehouse receipts. As a general guide, it may

be stated that the Commercial Law Article includes all or parts of the following present Code articles: Articles 2, 8, 9, 11, 14, 14A, 16, 23, 27, 39B, 47, 49, 58A, 63, 66, 71, 83, 95B, and 95C. It is divided into 18 titles, each of which will be commented on in this report.

The titles are as follows:

- Title 1 - General Provisions
- Title 2 - Sales
- Title 3 - Commercial Paper
- Title 4 - Bank Deposits and Collections
- Title 5 - Letters of Credit
- Title 6 - Bulk Transfers
- Title 7 - Warehouse Receipts, Bills of Lading, and Other Documents of Title
- Title 8 - Investment Securities
- Title 9 - Secured Transactions; Sales of Accounts; Contract Rights and Chattel Paper
- Title 10 - Effective Date and Repealer
- Title 11 - Trade Regulation
- Title 12 - Credit Regulation
- Title 13 - Consumer Protection Act
- Title 14 - Miscellaneous Consumer Protection Provisions
- Title 15 - Debt Collection - Special Provisions
- Title 16 - Statutory Liens on Personal Property
- Title 17 - Disposition of Unclaimed Property
- Title 18 - Bills of Lading and Warehouse Receipts - Criminal Provisions.

Each title of the Commercial Law Article was initially prepared by the Commission staff, the principal draftsman being Associate Revisor Zdravkovich. In addition, in the initial phase of drafting, a valuable contribution was made to this work by Assistant Revisor Hughes. The draft was then submitted to a Commission subcommittee, chaired by Lowell Bowen, Esquire, of Baltimore, and consisting of Shale Stiller, Esquire, and Zelig Robinson, Esquire, both of Baltimore. In addition, Jerome Asch, Esquire, and Charles Tatelbaum, Esquire, both of Baltimore, sat on the committee as consultants. Also attached to the committee were the following legislative consultants: Senators Curran, Byrnes, Steinberg and Thomas, and Delegates Heintz, Lombardi, Robertson, and Carter Hickman. Following committee approval of the various drafts, they were then submitted to the full Commission for approval.

In addition to this screening process, the various drafts were sent to a number of State officials and agencies for their consideration and comment. Many ideas incorporated in this article originated through this contact.

IV. DETAILED DESCRIPTION OF THE COMMERCIAL LAW ARTICLE.

A. In general.

Throughout this article, the Commission has proposed a number of similar or identical changes. Some of the typical examples follow.

1. The definition of "person".

The Commission has introduced in almost every subtitle a broad, standardized definition of "person." It is a synthesis of the UCC definitions of "person" and "organization" contained in §1-201 (28) and (30) of this article, except that the reference to "government or

"governmental subdivision or agency" is not always included.

2. Short title.

Language providing for a citation of a particular act (generally, a title or subtitle of the article) is modified to include the word "Maryland." This is done to indicate that a citation is to the act as enacted by the State of Maryland and not to a similar or similarly-named act adopted by any other jurisdiction. The emphasis is particularly valid when uniform laws are cited.

3. The phrase "but not limited to."

This language, which appears frequently in the law as a caveat following "including," is deleted as unnecessary since use of the word "including" in a statute is not intended in any sense to be exclusionary or limiting. The maxim of expressio unius est exclusio alterius and doctrines of similar implication are not intended to be made applicable by reason of ^{the} deletion.

4. The phrase "as amended."

References to specific acts "as amended" are deleted as unnecessary in light of the general applicability of Art. 1, §21, which provides that a reference to any portion of the Code or other law applies to any subsequent amendment, unless the referring provision provides otherwise.

B. Titles 1 through 10 - The Maryland Uniform Commercial Code.

In preparing the Commercial Law Article, the Commission included present Art. 95B (Uniform Commercial Code) as Titles 1 through 10 of the article. Although the style and organization of the Uniform Commercial Code differ from general revision guidelines, the Commission concluded that it would retain the present language, which is

generally uniform with that of other jurisdictions and with that of the Official Text of the Uniform Act. Consequently, except for changes in nomenclature required by the incorporation of present Article 95B into the Commercial Law Article and the few corrective changes noted in the General Revisor's Note following Title 10, these titles appear as originally enacted. (Although Title 9, which relates to secured transactions, is basically non-uniform, the Commission decided not to undertake any revision of it at this time. A user of the Code should take note that Title 9, as enacted in Maryland, is at variance with Art. 9 of the Official Text.)

Chapter 651, Acts of 1973, amended §1-103 of the Uniform Code to provide that the age of majority, as it pertains to contracts, is 18 years. The Commission notes that the last clause of the 1973 addition provides that "the legal defense of minority may only be asserted by a person under eighteen years of age." This wording, taken literally, would appear to be contrary to the general rules governing the contracts of minors in Maryland, and, the Commission suspects, may have been drafted more restrictively than actually intended. It implies that no one else but the minor may assert the defense on his behalf, and that a person who makes a contract while a minor may not assert the defense on his own behalf at any time after he has reached majority. On the other hand, the general rule in Maryland has been that, if a contract made by a minor is not beneficial to him, the contract is void ab initio, and, if it is of an uncertain nature, it is voidable only at the election of the minor. See, e.g., Crown Cork & Seal Co. v. Fankhanel, 49 F. Supp. 611 (D. Md., 1943); Ridgely v. Crandall, 4 Md. 435 (1953). As to voidable contracts, the minor may disaffirm the contract either during his minority or, unless

ratified by him, within a reasonable time after he attains his majority. See, e.g., Crown Cork & Seal, *supra*; McBriety v. Spear, 191 Md. 221 (1948); Adams v. Beall, 67 Md. 53 (1887). Furthermore, voidable contracts also may be disaffirmed by the minor's privies in blood. See, e.g., Levering v. Heighe, 2 Md. Ch. 81 (1859). The Commission is uncertain as to whether or not or to what extent the quoted provision of §1-103 was intended to limit or otherwise modify these rules. In light of the importance of these matters, clarifying legislation may be appropriate.

Chapter 344, Acts of 1970, added new §9-407 to prohibit a creditor from charging a fee for filing a document unless he files the document within 30 days or returns the fee to the debtor. The Commission notes that, although this section sets a time limit for filing the document, no time limit is prescribed for returning the fee in the event the document is not filed. Presumably the same 30-day period was intended to apply; however, the wording of §9-407 is, at best, ambiguous in this regard. The Commission also notes the use in this section of the term "creditor," as distinguished from the term "secured party" to which Title 9 is addressed. Since criminal sanctions are imposed for violations of this section, clarifying legislation may be appropriate.

C. Title 11 - Trade Regulation.

1. In general.

Title 11 contains statutes generally intended to regulate trade and commerce in a relatively broad sense. It consists of the following subtitles:

Subtitle 1 - Fair Trade Act

- Subtitle 2 - Antitrust
- Subtitle 3 - Gasoline Products Marketing Act
- Subtitle 4 - Unfair Sales Act
- Subtitle 5 - Unfair Cigarette Sales Act
- Subtitle 6 - Liquefied Petroleum Gas Containers
- Subtitle 7 - False Advertising
- Subtitle 8 - Consignees
- Subtitle 9 - Miscellaneous

2. Subtitle 1 - Fair Trade Act.

This subtitle, which is derived from Art. 83, §§102 through 110, is intended "to protect trade-mark owners, distributors, and the public against injurious and uneconomic practices in the distribution of articles of standard quality under a distinguished trade-mark, brand, or name." (Title to Ch. 212, Acts of 1935.) Only minor stylistic changes are made.

3. Subtitle 2 - Antitrust.

This subtitle, which is derived from Art. 83, §§36 through 48, is complementary to the "body of federal law governing restraints of trade, unfair competition, and unfair deceptive and fraudulent acts or practices in order to protect the public and foster fair and honest intrastate competition." (§12-202(a)(1)).

Since portions of the Antitrust Act, as originally enacted, were carefully and purposefully patterned after their counterparts in the Federal law, the Commission wishes to emphasize that its revision is for purposes of clarity and improved organization only. No changes in meaning, intent, or construction are intended. Consequently, the legislative mandate that, in construing this subtitle, the courts be

guided by the interpretation given to the various Federal statutes (cf., present Art. 83, §36 - now §11-202) will remain unaffected.

Section 12-401 is the definition section for this subtitle. A new definition of "court" is added to indicate, without unnecessary repetition elsewhere in the subtitle, that a proceeding under the subtitle is to be brought in the circuit court of a county or Baltimore City. Also, a definition of "Attorney General" is added to refer to his "designee" and avoid unnecessary repetition elsewhere of the terms "designee" or "assistant attorney general."

Section 11-204 restates present Art. 83, §38 with but minor changes, as noted in the revisor's notes to the section. With respect to the exception contained in (b)(5), the Commission notes that, quite unlike the other exceptions, it omits any reference to "services". Since services, like "commodities", are also subject to changing conditions affecting their marketability, it would appear that the omission was an inadvertent one. However, since any change in this regard would be of a substantive nature, no change is made.

Section 11-205, which presently appears as Art. 83, §44, reflects minor changes made for greater clarity and to conform the provisions of this section to the Maryland Rules. The last sentence of Art. 83, §44(8), dealing with contempt of court, is deleted as unnecessary since it merely restates the inherent power of a court to punish for contempt if the court's order is disobeyed.

Section 11-207 contains the provisions which appear in Art. 83, §40(1) through (3). The provision which provides that state prosecutions be commenced by "complaint, information, or indictment" is deleted as unnecessary since this is adequately covered by the Maryland Rules; cf., Maryland Rule 703.

Section 11-209 consolidates and restates the provisions of Art. 83, §§41 and 46. They deal with various aspects of a civil action brought under this subtitle. The provision preventing the revival of actions barred on July 1, 1972 is deleted as now obsolete.

4. Subtitle 3 - Gasoline Products Marketing Act.

This subtitle, which is derived from Art. 23, §§167A through 167J, "regulates" marketing agreements between gasoline distributors and gasoline dealers. Specific non-substantive changes made for purposes of clarification are noted in the various revisor's notes in the subtitle. Issues which the General Assembly may wish to consider for the purposes of further clarification, but which are substantive in nature, are noted below.

With respect to §11-304(a), the Commission notes that the phrase "expressly set forth in the marketing agreement" (which is but a restyling of the original "expressly set forth therein") is not the clearest expression possible in the context of an oral agreement, added ^{to} the definition of "marketing agreement" by Ch. 852, Acts of 1974. A similar problem arises with the use of the word "signed" in §11-304(b)(1).

With respect to §11-304(c), which prohibits price setting by the distributor, it would appear that the Legislature intended this provision to apply to all marketing agreements, even in situations where the Maryland Fair Trade Act (Subtitle 1 of this title) may otherwise permit the setting of resale prices. However, legislative clarification would be helpful in this regard.

With respect to §11-305, the Commission is uncertain as to whether and to what extent the provisions of this section, particularly items

(3) and (4) were intended to limit or otherwise modify the concept of a "material" breach by the dealer, which is an expressed exception to the goodwill payment provisions of §11-304(i); cf., §11-304(i)(3).

The Commission also notes that, although Ch. 852, Acts of 1974, amended what are now §§11-304(g) and (i) to prohibit an unreasonable refusal to renew a marketing agreement and to provide for certain goodwill payments in the event of a termination, cancellation, or unreasonable refusal to renew, §11-305 - perhaps deliberately - was left unamended, without apparent application to an action based on a refusal to renew.

In §11-307, which is derived from Art. 83, §§167-I and 167F, the venue provision is deleted as inconsistent with and unnecessary in light of the general venue provisions contained in Title 6 of the Courts Article. Although §167-I appears to permit an action in any county of the State "or"/^{any}where the defendant resides or has his principal place of business, this result (which is somewhat non-sequential in and of itself) would appear inadvertent.

5. Subtitle 4 - Unfair Sales Act.

This subtitle, which is derived from Art. 83, §§111 through 115, prohibits certain practices of advertising, offering to sell, or selling merchandise at less than cost. Only minor stylistic and organizational changes are made in this subtitle.

6. Subtitle 5 - Unfair Cigarette Sales Act.

This subtitle, which is derived from Art. 83, §§116 through 126, prohibits certain practices in the sale of cigarettes at less than cost. Whenever possible, this subtitle has been revised to follow the organization and style of the Unfair Sales Act, contained in Subtitle 4 of this title. The Commission believes this will promote

greater ease in future comparison of the similar provisions of the two subtitles. Of course, all substantive differences between the subtitles have been retained.

In §11-505, which is derived from Art. 83, §120, the reference to violation of the Unfair Sales Act is deleted as inconsistent with §11-509, presently Art. 83, §125.

All other changes, noted in the revisor's notes, are stylistic and for purposes of conformity in language and organization.

7. Subtitle 6 - Liquefied Petroleum Gas Containers.

This subtitle, which is derived from Art. 27, §§355A through 355G, contains certain restrictions on the use of or trafficking in marked liquefied petroleum gas containers.

Section 11-603 prohibits the unlawful use of these containers. Item (1) of this section has been revised to clarify its applicability to a "marked container," rather than to any container, whether marked or not. This reading is apparent from the general structure of this subtitle, as well as the more specific references in present §§355C and 355D - now §§11-604 and 11-605.

Section 11-605 deals with civil and criminal remedies for violation of the provisions of this subtitle. The Commission questions whether retention of this section, with the specific and unique procedures established by it, is necessary in light of the general procedures which normally apply to actions of this nature.

The Commission concluded that present Art. 27, §355F, is unnecessary in light of the general court costs provisions of Title 7 of the Courts Article. Accordingly, that section is proposed for repeal.

In addition to the provisions of this subtitle, which specifically relate to liquefied petroleum gas containers, Art. 27, §§471 through 481 contain provisions relating generally to returnable containers and marked items of linen suppliers. Although those sections were originally allocated for inclusion in this title, preliminary research by the Commission would indicate that they are rarely, if ever, used, and, therefore, may be obsolete. Upon conclusion of its study, the Commission will report to the General Assembly with its recommendations regarding the treatment of these sections.

8. Subtitle 7 - False Advertising.

This subtitle, which is derived from Art. 27, §195A, prohibits false advertising in the conduct of any business, trade, or commerce or in the providing of any service. Although the statutory treatment of "consumer"-directed advertising and related consumer protection provisions are contained in Titles 13 and 14 of this article, the provisions contained in this subtitle have been placed in the more general Trade Regulation Title in light of their broad applicability to any false advertising in the conduct of any trade, business, or commerce.

9. Subtitle 8 - Consignees.

This subtitle, which is derived from Art. 2, §§1 through 6, 8, 12, 13, 15, and 16, and Art. 27, §169, contains provisions which deal with consignees and the creation of consignee liens.

Since, with respect to commission merchants and the like, the term "factor" is somewhat obsolete, throughout this subtitle the more modern usage "consignee" has been substituted and uniformly used. The definition of that term, contained in §11-801(b), is derived from the definition of "factor" contained in Rowland v. Dolby, 100 Md. 272, 274

(1905) and from the provisions of §2-326(3)(b) of the Uniform Commercial Code.

10. Subtitle 9 - Miscellaneous Provisions.

This subtitle, which is derived from Art. 27, §§43, 60A, and 176 through 180, contains miscellaneous provisions dealing with rental batteries, convict made goods, and sale and coloring of chicks.

Section 11-903 limits importation and sale of convict made goods. With respect to the penalty provided by subsection (d) the Commission decided to delete the alternate minimum penalty of 30 days imprisonment, presently contained in Art. 27, §43. This proposed deletion is in conformity of the statement of legislative policy contained in Art. 27, §643, as repealed and reenacted by Ch. 181, Acts of 1972. That section sets forth the general rule that, notwithstanding a prescribed minimum penalty, a Court may nevertheless impose a lesser penalty of the same character. Although there are exceptions to the general rule, they would not appear to be at all controlling in this instance. See, e.g., Art. 27, §36B(e); State v. Shearin, ___ Md. ___ (The Daily Record, Oct. 21, 1974). The deletion of minimum penalties follows the revision standard previously adopted by the General Assembly; see, e.g., NR §4-1201.

D. Title 12 - Credit Regulation.

1. In general.

Title 12 contains statutes generally governing credit transactions, both loans and credit sales. It consists of the following subtitles:

Subtitle 1 - Interest and Usury

Subtitle 2 - Small Loans - Credit Provisions

Subtitle 3 - Consumer Loans - Credit Provisions

Subtitle 4 - Secondary Mortgage Loans - Credit Provisions

Subtitle 5 - Retail Credit Accounts

Subtitle 6 - Retail Installment Sales

2. Subtitle 1 - Interest and Usury.

This subtitle is derived for the most part from Art. 49. In addition, it contains the provisions of Art. 8, §10, which relate to the assignment of wages on a usurious loan; and Art. 23, §125, which provides that a corporation may not interpose the defense of usury in any action.

This revision - designed to clarify, but not change, the existing law - reflects the interpretations attached to Art. 49 by the Court of Appeals in B. F. Saul Co. v. West End Park, 250 Md. 707 (1968) and by various published Opinions of the Attorney General. The Legislature's attention is directed to the elaborate revisor's notes which describe in detail all changes made.

3. Subtitle 2 - Small Loans - Credit Provisions.

This subtitle, which is derived from portions of Art. 58A, contains the credit and similar consumer-oriented provisions relating to loans made in amounts of \$500 or less. Those provisions of Art. 58A which deal with licensing and regulation are retained in that article pending further revision and inclusion in the Business Regulation Article.

Article 58A, originally enacted by Ch. 88, Laws of 1918, was taken for the most part from the Uniform Small Loan Law of 1916. To more accurately reflect this origin, as well as the current economic status of the maximum loan permitted under this subtitle, the term "small loan" has been re-adopted and substituted for "consumer loan".

Section 12-202 sets out the general requirement of licensure for making loans under this subtitle. A reference to persons exempt from licensing is added to reflect the fact that there are those who are permitted to make loans without first obtaining a license. In this regard, see the last sentence of Art. 58A, §1; see, also, Commissioner of Small Loans v. First National Bank of Maryland, 268 Md. 305 (1973), where the Court of Appeals held that, under Federal law, national banks are permitted to make small loans without a State license, even though State law prohibits banks generally from obtaining licenses and from making these loans. The General Assembly may wish to compare the language of this section ("... may not make a loan") with that of its counterpart in Subtitle 3 (§12-302: "... may not engage in the business of making loans").

Since there are some persons who are permitted to make loans without a license, the Commission concluded that, in this subtitle, the somewhat more meaningful term "lender", as defined in §12-201, should be substituted for "licensee." This conforms to the usage previously adopted by the General Assembly with respect to secondary mortgage loans in Art. 66, §§39 et seq. - the credit provisions of which are now contained in Subtitle 4 of this title. No change in substance is intended; and §12-202, as well as Art. 58A, §1, clearly expresses the requirement that, unless exempt by law, a lender must be licensed.

Section 12-203(b), which relates to persons authorized to make both small loans under this subtitle and "consumer" loans under Subtitle 3, is derived from Art. 11, §196(b)(2) - now §12-303(b); it is repeated in this subtitle for purposes of emphasis and clarity.

Section 12-204, which is derived from the first paragraph of Art. 58A, §15, prohibits false advertising. It is generally patterned after its counterpart provision relating to consumer loans, contained in present Art. 11, §193, now §12-304(a) of this title. The Commission notes that unlike the consumer loan law provisions which appear in §12-304(b) and (c), Art. 58A - and, therefore, Subtitle 2 - contains no express provisions relating to the authority of the Commissioner of Consumer Credit over advertising by licensees.

Section 12-206 imposes certain duties on a lender. With respect to subsection (a) of this section, the Commission notes that unlike other statutory requirements of this sort - see, e.g., §§12-106 and 12-503(e) of this title - this section (as well as §12-308 relating to consumer loans) expressly requires that the statement be "in the English language." This also might be compared with the apparent trend in consumer legislation to require that disclosures be made in the same language as was the original solicitation and transaction. See, e.g., Federal Trade Regulation "Cooling-Off Period for Door-to-Door Sales," 37 F.R. 22933, effective June 7, 1974; and §14-302 of this article.

Section 12-208 prohibits taking of certain securities for a loan. The General Assembly may wish to compare and, if appropriate, conform the somewhat different language of this section and its consumer loan counterpart, §12-311.

Section 12-210 prohibits certain charges and transactions with respect to a loan made under this subtitle. It should be noted that the consumer loan counterpart to item (2) of this subsection - now contained in §12-313(a)(2) of this article - prohibits the division of

loans both for the purpose of or "with the effect of" obtaining excess charges. Again, the General Assembly may wish to consider conforming these provisions to each other.

4. Subtitle 3 - Consumer Loans - Credit Provisions.

This subtitle, which is derived from portions of Art. 11, §§163 et seq., contains the credit and similar consumer-oriented provisions, relating to loans made in amounts of \$3500 or less. Those provisions of Art. 11, §§163 et seq. which deal with licensing and regulation are retained in that article, pending future revision and inclusion in the Business Regulation Article.

The name of this subtitle has been revised to adopt the more meaningful term "consumer loan" in substitution for the present, archaic reference to an "industrial finance" loan.

Except where required to avoid a substantive change, the terminology and organization of this subtitle is closely patterned after that of Subtitle 2, relating to small loans.

With respect to §12-308(c), relating to prepayments, it might be noted that there is no provision as to the required application of partial prepayments. The General Assembly may wish to amend this section to conform to its small loan counterpart, §12-206(c).

Section 12-313(b) is revised to provide that if a lender charges any amount in excess of that permitted by this subtitle, he may not receive "or retain" any principal, interest, or other charge on the loan. The words "or retain" are added to conform this section with present Art. 11, §168, as well as present Art. 58A, §16(d) - now §12-310(b), the small loan counterpart to this subsection. This addition makes no substantive change with regard to the right of the borrower to recoup by judicial action payments made on a void loan. See, e.g., Credit

Finance Service v. Able, 227 A. 2d 396 (1956), decided by the Municipal Court of Appeals for the District of Columbia under the Maryland Small Loan Law at a time when it did not expressly prevent a lender from "retaining money." See, also, Fisher v. Bethesda Discount Corp., 221 Md. 271 (1960); and Beneficial Finance Co. v. Administrator, 260 Md. 430 (1971). However, the absence of the word has caused the Attorney General to rule that the then Bank Commissioner lacked the authority to administratively order a licensee to return money so collected. 54 Op. Atty. Gen. 26 (1969). Since small loans and consumer loans are now under the jurisdiction of the same office, there would appear to be no reason extant to maintain the difference.

Art. 11, §196(a)(2), which permits, but does not require, a licensee to require repayment of loans in equal or substantially equal periodic installments, is proposed for repeal as obsolete and unnecessary. There is nothing in this subtitle or in any other provision of law which would, in any event, prevent a lender from requiring repayment in installments.

Finally, with respect to both subtitles 2 and 3, generally, the Commission notes that there are several differences between the present provisions of Art. 58A and Art. 11, for which the Commission is unaware of the reason in policy or practice; however, to avoid any inadvertent substantive change, the Commission has not attempted to conform these provisions. In addition to those noted in this report, one might compare, e.g., §12-203(c) with §12-303(c); §12-209 with §12-302; and §12-213 with §12-315.

5. Subtitle 4 - Secondary Mortgage Loans - Credit Provisions.

This subtitle, which is derived from portions of Art. 66, §§39 et seq., contains the credit and similar consumer-oriented provisions

relating to secondary mortgage loans. The provisions of Art. 66, §§39 et seq., which deal with licensing and regulation are retained in that article pending future revision and inclusion in the Business Regulation Article.

In §12-401, the definition of "lender" is modified by deletion of the phrase "in the regular course of business"; this phrase is unnecessary in light of the requirements of §12-402(a) and is inconsistent with Art. 66, §41, as amended by Ch. 744, Acts of 1974 to permit certain unlicensed persons to make secondary mortgage loans not in the regular course of business. Also, in §12-401, the present definition of "secondary mortgage loan" is divided into two definitions, one defining "secondary mortgage loan" and the other defining "lien on real property." These changes are made for purposes of clarity and are nonsubstantive in nature.

Section 12-402 sets out the general requirement of licensure for making secondary mortgage loans "in the regular course of business", unless exempt under the licensing provisions of Art. 66.

Section 12-404 restates with some modification Art. 66, §61(a). It should be noted that in subsection (c)(1) of this section, which exempts certain loans from the prohibition against "balloon payments", the present statutory reference to a "first lien or encumbrance" is retained although the Commission feels it might be better revised to reflect the fact that the "secondary" mortgage can be a third mortgage as well. Possibly a more correct reference would be to "all prior liens or encumbrances, rather than to only the "first" lien or encumbrance. Also, /the General Assembly may wish to consider adopting a definition of the term "balloon payment" as used in this section.

6. Subtitle 5 - Retail Credit Accounts.

This subtitle, which is derived from Art. 83, §§153A through 153-I, regulates finance charges and other transactions relating to retail credit accounts.

Section 12-501(f) defines the term "finance charge." This term is substituted throughout Subtitle 5 for "service charge" to conform to the usage of Subtitle 6, the Retail Installment Sales Act, as well as that of the industry.

Section 12-501(e) and (j) introduces two new terms adopted in this subtitle for purposes of greater clarity: "closed end account" and "open end account." The definitions of these terms, which are well-known and generally used in the industry, are derived from language presently appearing in Art. 83, §§153D(b) and (c), and, therefore, no substantive change results from this usage.

Similarly, in Section 12-501(f), a definition of "holder" is introduced to avoid unnecessary repetition of the terms "seller" and "financial institution." This conforms with the similar approach and definition contained in Subtitle 6, the Retail Installment Sales Act.

With respect to §12-505, it should be noted that the last sentence of each of present Art. 83, §§153D(b)(4) and 153D(e) - now, respectively, subsection (d) and the first sentence of subsection (e)(4) of this section - refer expressly to a "seller." This limited reference appears inconsistent with the scope of the balance of the section; see, e.g., the general provisions of present §153D(a) - now §12-504(a) - which refers to both a seller and a financial institution (and their successors in interest); and §153D(e) which, in its general introductory language, now subsection (e)(2) of this section, refers to a "holder." The Commission is uncertain as to whether or not the limitation was

intended and, therefore, has retained the word "seller" to avoid making any inadvertent substantive change.

Art. 83, §137A, while presently contained in the Retail Installment Sales Act, also applies to closed end retail credit accounts. Its provisions are repeated, therefore, in §12-505(f) for purposes of clarity.

7. Subtitle 6 - Retail Installment Sales.

This subtitle, which is derived from Art. 83, §§128 through 153, and Art. 83, §161, regulates certain installment sales and installment sales agreements. It is divided into four parts for the purpose of better organization.

Part I contains the definitions of the terms frequently used in this subtitle. (§12-601). Part II deals with installment sales generally. (§§12-602 through 12-631). Part III deals with certain installment sales transactions made by sales finance companies. (§§12-632 through 12-636). Although Art. 83, §161, from which Part III is derived, presently appears in the Subtitle "Finance Companies" of Art. 83, it is closely related to the other provisions of this subtitle. Furthermore, including §161 here conforms with the treatment of small loans, consumer loans, and secondary mortgage loans, where the credit and similar consumer-oriented provisions have been placed in this title and the licensing and regulation provisions are retained in their present respective Code allocations, pending future revision and inclusion in the Business Regulation Article. Since the definitions contained in the "Finance Companies" subtitle are identical to those which relate to installment sales, no substantive change is effected by this inclusion of present §161 here.

The Commission also concluded that present Art. 83, §151, which exempts from Part III of this subtitle installment agreements made before June 1, 1941, is obsolete. Accordingly, that section is proposed for repeal.

In §12-601(b), the defined term "agreement" is substituted for "installment agreement" for purposes of brevity and to avoid unnecessary confusion with the term "installment sale agreement," defined in §12-601(1).

In §12-601(f), the term "consumer goods" is adopted, its definition being derived from Art. 83, §132A(a). Use of the new term facilitates greater ease and brevity in referring to these specific types of goods in the subtitle.

Section 12-609 deals with installment sales of motor vehicles. The draft retains the somewhat archaic listing of rates by dollars per \$100 (rather than in percentages) to avoid losing the emphasis that the rates expressed in this section are "add-on" rates. Cf., Falcone v. Palmer Ford, Inc., 247 Md. 487 (1966). The Commission notes, however, the absence in this section of express provisions to this effect, such as that contained in §12-611(a)(1), as well as any provisions for pro rata adjustments, such as those contained in §12-611(a)(2) and (3). Clarifying legislation may be appropriate.

Section 12-611 restates with but minor stylistic change almost all of Art. 83, §132A. The Commission notes that the last sentence of present Art. 83, §132A(a)(4) - now subsection (c) of this section - refers expressly to a "seller." This limited reference appears inconsistent with the balance of present §132A, which generally applies to a "holder." The Commission is uncertain as to whether or not the limitation is intended and, therefore, has retained the word "seller"

to avoid making any inadvertent substantive change. A similar problem appears with respect to §12-612(c), which restates Art. 83, §132A(e).

In §12-630(a) and (c), which relates to violations of the subtitle, the Commission has added a cross-reference to §12-609, which relates to the finance charge permitted for motor vehicles, since motor vehicles of \$5,000 or less are otherwise generally treated under this subtitle the same as all other goods. The Commission feels that this change, while of a substantive nature, would be warranted. Of course, motor vehicles in excess of \$5,000 remain unaffected by this change since, in any event, the subtitle (except only for §12-609) is not applicable to them.

Throughout Part III of the subtitle, the term "sales finance company" is substituted for "licensee" for purposes of clarity. This is required since the licensing provisions relating to sales finance companies are retained in Art. 83, §§154 et. seq., for future revision and inclusion in the Business Regulation Article. In fact, under Art. 83, §154, not all sales finance companies must necessarily be licensed. The broad usage is, therefore, the more appropriate in any event.

E. Title 13 - Consumer Protection Act.

1. In general.

This title contains the bulk of the present Art. 83 Subtitle "Consumer Protection Act", Art. 83, §§19 through 27A.

In revising the Consumer Protection Act, the Commission noted several provisions which, unlike the balance of that Act, are clearly contractual in nature and not of a criminal, prohibitory nature (i.e., neither referred to as an "unlawful practice" or "unfair or deceptive

trade practice" nor otherwise couched in prohibitory terms). Apparently, these provisions, while originally enacted as a part of the Act, are unrelated to the criminal penalties in the Act and the general jurisdiction of and enforcement by the Division of Consumer Protection. Consequently, for purposes of clarity and improved organization, the Commission has recommended the placement of these "free-standing" provisions in Title 14, Subtitle 11 of this article.

The Commission also found that, in various parts of the present Act, inconsistent language is used. For example, the term "subheading" is used interchangeably with the more correct "subtitle". Both terms, however, clearly refer to the Act in its entirety; this is particularly evident from the use of the word "subheading" in the introduction to Art. 83, §20, which, in fact, is the definition section for the entire subtitle. Also, the terms "unlawful trade practices" and "unfair or deceptive trade practices" are inconsistently employed where the same meaning is intended; compare, e.g., Art. 83, §§20F(a) with 20D(a), both enacted by Ch. 609, Acts of 1974. These and other inconsistencies have been clarified and conformed, and the proposed Title 13 reorganized - with but minimal, if any, substantive change - to obviate the future need to classify prohibitions by any specific nomenclature. As noted in the revisor's note to §13-301, the new organization of Title 13 (and Title 14, Subtitle 11) will make it easier for the General Assembly to further amend and add to the law in the future. If the General Assembly chooses to subject a certain prohibited act to the exemptions, enforcement, and other provisions of this title, it need merely enact that prohibition as a new section (or subtitle, if necessary) to Title 13; the prohibition may be limited to "consumer"

transactions, such as §13-303, or may encompass a broader range of activities and persons, such as §13-304 which refers to any "seller" (rather than "merchant"), any "buyer" (rather than "consumer"), and any "merchandise, real property, or intangibles" (rather than "consumer goods"). If, on the other hand, the General Assembly chooses to enact a new prohibited activity not subject to the jurisdiction of the Division, it need merely add that prohibition to Title 14 of this article, which contains "consumer protection" provisions that are generally independent of the Consumer Protection Act and the authority of the Division.

Notwithstanding the several gaps, discrepancies in language, and overlapping of provisions in the present Act, the Commission believes that Title 13 effects no changes which are contrary to or inconsistent with the intent of the General Assembly in enacting the Consumer Protection Act, generally, and Chs. 596 and 609, Acts of 1974, in particular.

Title 13 contains the following subtitles:

Subtitle 1 - Definitions; General Provisions

Subtitle 2 - Division of Consumer Protection; Consumer Council

Subtitle 3 - Unfair or Deceptive Trade Practices

Subtitle 4 - Enforcement and Penalties

Subtitle 5 - Short Title.

The Legislature's attention is directed to the elaborate revisor's notes which describe in detail all changes made.

2. Subtitle 1 - Definitions; General Provisions.

Section 13-101 defines the terms frequently used in this title.

Section 13-101(f) restates with some modification Art. 83, §20(b). Since intangibles and real property normally are not considered as

"merchandise", the references to "intangibles" and "real estate" in present §20(b) are deleted from this definition and, for purposes of greater clarity and emphasis, are coupled with the word "merchandise" in the appropriate substantive sections of the title. See, e.g., §13-304.

With respect to §13-101(j), the definition of the term "service", the Commission notes that Ch. 609, Acts of 1974, added to the Consumer Protection Act the new term "consumer services," as defined in subsection (d) of this section. The Commission is uncertain as to whether or not the limited definition of "service" in subsection (j), which predated Ch. 609, was actually intended by the General Assembly to modify and, consequently, limit the new term "consumer service". A literal reading of present §20 would, of course, require this construction; since any change in this regard would be substantive in nature, the Commission has retained these definitions basically as enacted, with but minor changes in style.

3. Subtitle 2 - Division of Consumer Protection; Consumer Council.

This subtitle deals with the general powers and duties of the Attorney General and the Division of Consumer Protection. It also provides for the creation, organization, and authority of a Consumer Council. Attention is called to the revisor's notes to §§13-204 and 13-205, which provide a full discussion of most of the changes made in this subtitle.

4. Subtitle 3 - Unfair or Deceptive Trade Practices.

This subtitle defines and prohibits certain unfair and deceptive trade practices. All changes made are noted in the revisor's notes, notably in that to §13-301 and 13-304.

5. Subtitle 4 - Enforcement and Penalties.

This subtitle provides for enforcement of the provisions of Title 13 and penalties for their violation.

6. Subtitle 5 - Short Title.

This subtitle simply provides that Title 13 may be cited as the "Maryland Consumer Protection Act".

F. Title 14 - Miscellaneous Consumer Protection Provisions.

1. In general.

Title 14 consists of consumer-oriented provisions found in various parts of the Code which, for the most part, are independent of the Consumer Protection Act (Title 13) and the authority of the Attorney General. It consists of the following subtitles:

Subtitle 1 - Unit Pricing

Subtitle 2 - Consumer Debt Collection

Subtitle 3 - Door-to-Door Sales

Subtitle 4 - Consumer Products Guaranty Act

Subtitle 5 - Fine Prints

Subtitle 6 - Gold and Silver

Subtitle 7 - Secondhand Watches

Subtitle 8 - Used Radio and Television Sets

Subtitle 9 - Kosher Products

Subtitle 10 - Automotive Repair Facilities

Subtitle 11 - Miscellaneous

2. Subtitle 1 - Unit Pricing.

In revising the Consumer Protection Act, now Title 13 of this article, the Commission noted several inconsistencies between the

general provisions of that Act, particularly as amended by Ch. 609, Acts of 1974, and the "unit pricing" provisions which, as Art. 83, §21E, are presently a part of the Act. Compare, e.g., the exemptions granted by Art. 83, §§20J and 21E(b) - now, respectively, §§13-104 and 14-102. To preserve the integrity of the generally independent unit pricing provisions, the Commission decided to transfer them to Title 14, with but the minimal changes necessitated by enactment of Ch. 609, Acts of 1974.

Art. 83, §21E(f) presently provides that, after the Attorney General declares the specified practice unlawful, "thereafter ... [it qualifies] as an unlawful practice under §21 ... and ... [is] subject to §§22 and 22A ... including the penalties prescribed thereon...." Ch. 609, however, repealed both §§21 and 22A and, in effect, substituted the new concept of an "unfair or deceptive trade practice," as well as new enforcement procedure for violations of these practices. The resultant gap and inconsistencies have been corrected by §§13-301 (10) and 14-106 in a manner the Commission believes is faithful to the legislative scheme intended by enactment of Ch. 609.

Present Art. 83, §20E, also enacted by Ch. 609, Acts of 1974, subjects the general rule-making power of the Division, as it relates to "the purposes of this subheading [subtitle]", to certain specific procedures; present Art. 83, §22C, enacted ^{by}/Ch. 596, Acts of 1974, provides for the arbitration of disputes "arising under a provision of this subtitle." It would appear that these provisions were intended to apply to unit pricing, which is presently a part of the referenced "subtitle", the Consumer Protection Act. Consequently, these provisions are incorporated by reference in §§14-105 and 14-107, respectively.

Section 14-101(c) defines "unit price". This definition is modified to reflect the fact that metric units are, increasingly, "units commonly in use in the United States."

3. Subtitle 2 - Consumer Debt Collection.

This subtitle generally governs consumer debt collection. It restates without substantive change the provisions of Art. 83, §167.

4. Subtitle 3 - Door-to-Door Sales.

This subtitle restates with but minor change, Art. 83, §§28 through 32.

Section 14-302 is derived from Art. 83, §29, which, as enacted by Ch. 753, Acts of 1974, provided that "[i]n connection with any door-to-door sale, it constitutes an unlawful practice, as such term is used in §21 of this article, for any seller to...." Ch. 609, Acts of 1974, however, repealed the referenced §21 of Art. 83, and, in effect, substituted the new concept of an "unfair or deceptive trade practice," as well as new enforcement and other procedures for violations of these practices. As a result, to correct the resultant gap and inconsistency in language in a manner which the Commission believes is faithful to the legislative scheme intended by enactment of both Chs. 609 and 753, the term "unfair or deceptive trade practice" is substituted in this section, with a cross-reference to Title 13 of this article.

The Commission notes that the Federal Regulation, 37 F.R. 22933, after which the source law to this subtitle was patterned, refers in its counterpart to §14-302(1)(i) and (2)(ii) to "Spanish" as an example of what is meant by "the same language as that principally used in the ...presentation" and "the same language as that used in the contract." The Commission suspects that the absence of this

example in present §29 results only from the belief that it was unnecessary and was not intended to broaden the meaning of the word "language." However, clarifying legislation may be appropriate.

Section 14-305 states the penalties for violation of the provisions of this subtitle. The Commission notes that the penalties imposed by this section on persons "who willfully violate" this subtitle are identical to the penalties imposed by §13-411 on persons "who violate" the provisions relating generally to unfair or deceptive trade practices. Since violation of this subtitle also constitutes an "unfair or deceptive trade practice" - see §§13-301(10) and 14-302 - the General Assembly may wish to conform the two standards of violations.

Section 14-306 is a "short title" section which presently appears as Art. 83, §32. The present reference to the "Maryland Home Solicitation Sales Act" is deleted and a new reference to "Maryland Door-to-Door Sales Act" is introduced to conform to both the language of this subtitle (where the words "home solicitation sales" nowhere appear) as well as the Federal Trade Regulation ("Cooling-Off Period for Door-to-Door Sales," 37 F.R. 22933) after which the source law to this subtitle was closely patterned.

5. Subtitle 4 - Consumer Protection Guaranty Act.

This subtitle, which is derived from Art. 83, §§168 through 177, deals with certain guarantees covering consumer products.

Section 14-402 provides for liberal construction of this subtitle. It presently appears as the first sentence of Art. 83, §177(a). The second sentence of that section, which provides that "due consideration and great weight ... be given to the Consumer Protection Act" is deleted as unnecessarily ambiguous in light of the vast schematic and definitional differences between the two Acts. Compare, for example,

the definitions of "consumer goods" in §§13-101 and 14-401; and the exemptions in §§13-104 and 14-101(j)(3).

Section 14-403 enumerates various required disclosures. The Commission assumes that the unusual reference in this section to the "first" person guaranteed is intended to refer to the "person guaranteed" as defined in §14-401(f)(1), as distinguished from a "person guaranteed" under §14-401(f)(2). If this is not the case, clarifying legislation may be appropriate.

Art. 83, §171, which presently appears in the subtitle as §14-405, exempts a guarantor if the consumer's "failure to provide reasonable and necessary maintenance" caused the malfunction. However, as presently worded, this section makes no distinction as to whether or not the requisite "reasonable and necessary maintenance" was in fact ever disclosed to the person guaranteed, as required by §14-403(2). In light of the broad definition of the term in §14-401(g), it would appear unfair to exempt a guarantor simply because the consumer failed to provide any maintenance, the requirement and specifics for which the guarantor has himself failed to disclose. Such a result would appear at odds with the provisions of §14-404(b) and is apparently not intended. Therefore, the phrase "failure to provide any reasonable and necessary maintenance disclosed under §14-403" has been substituted. This change would also appear to follow from the legislative dictate in §14-402 that this subtitle be "liberally construed and applied to promote its purposes and policies".

6. Subtitle 5 - Fine Prints.

This subtitle, which is derived from Art. 83, §§178 through 183, regulates the sale of fine prints. The Commission has introduced some minor, nonsubstantive changes for the purposes of clarity, all of which

are detailed in the revisor's notes.

7. Subtitle 6 - Gold and Silver.

This subtitle, which is derived from Art. 27, §§217 through 223, imposes certain standards on transactions with items made in whole or in part of gold or silver.

The Commission notes that §§14-605 and 14-606, which relate to silver and silver alloy merchandise, contain no provisions relating to testing standards comparable to those appearing in §14-604(b) and (c), which relate to gold and gold alloy merchandise; since the Commission is uncertain as to whether this omission was intentional or inadvertent, no change is made in this regard.

8. Subtitle 7 - Secondhand watches.

This subtitle, which is derived from Art. 27, §§224 through 228, regulates transactions in secondhand watches.

With respect to §14-702, which exempts watches returned for exchange or credit from the subtitle, the Commission observes that there are no standards relating to any time limit within which a watch may be returned and still qualify for exemption. Also, there is no requirement that the seller show to a subsequent purchaser any record of prior sale or the date of return of a previously sold watch. The General Assembly may wish to consider correcting these probably unintended omissions.

In §14-706, as well as §14-803 with respect to used radio and television sets, the alternate minimum penalties of a \$100 fine are deleted to conform to the statement of legislative policy contained in Art. 27, §643, as repealed and reenacted by Ch. 181, Acts of 1972. In this regard, see the discussion on page 15 of this report with respect to §11-903 of this article. The Commission notes that the

specific, defined prohibitions of this subtitle, as well as Subtitle 8, are subject to lesser penalties than the general provisions of Art. 27, §195(b-2), which permit imposition of a \$1,000 fine and a one-year prison term for persons who offer for sale secondhand merchandise without identifying them as such. The General Assembly may wish to conform these provisions and penalties.

9. Subtitle 8 - Used Radio and Television Sets.

This subtitle, which is derived from Art. 27, §214A, regulates the advertising and sale of used radio and television sets. Only minor stylistic changes are made.

10. Subtitle 9 - Kosher Products.

This subtitle, which is derived from Art. 27, §§196 and 197, regulates the advertising and sale of kosher meat and food products.

Section 14-904 is new language derived without substantive change from the identical penalty provisions of each of Art. 27, §§196 and 197. The alternative minimum penalties of a \$25 fine and 30 days imprisonment are deleted; in this regard, see discussion on page 15 of this report with respect to §11-903 of this article.

11. Subtitle 10 - Automotive Repair Facilities.

This subtitle restates with but minor modification Art. 83, §§50 through 52.

With respect to §14-1005, the last sentence of present §52, which permits a court to award costs, is deleted as unnecessary in light of Maryland Rule 604.

12. Subtitle 11 - Miscellaneous.

This subtitle contains statutes dealing with assignment of contracts or promissory notes, waiver in certain replevin actions, unsolicited sending of merchandise, issuance of credit cards, and extension of appliance service contracts. Although these provisions are

presently a part of the Consumer Protection Act (the balance of which is contained in Title 13), they are clearly contractual in nature only and, therefore, not intended to be subject to the criminal penalties of that Act or the general jurisdiction of and enforcement by the Division of Consumer Protection. Therefore, for purposes of organizational clarity, these provisions have been transferred to this subtitle. In this regard, see discussion beginning on page 25 of this report with respect to Title 13; see, also, general revisor's note to this subtitle.

Attention is also called to the revisor's notes to §§14-1102 and 14-1104, explaining substitution of the word "merchandise" for "goods" and "goods [and] wares," respectively.

G. Title 15 - Debt Collection - Special Provisions.

1. In general.

This subtitle combines provisions found in various parts of the Code relating to debt collection. It consists of the following subtitles:

Subtitle 1 - Preferences and Priorities in Insolvency; Assignments for Benefit of Creditors.

Subtitle 2 - Fraudulent Conveyances.

Subtitle 3 - Assignment of Wages

Subtitle 4 - Assignment of Debts

Subtitle 5 - Assignment of Claims to Nonresidents

Subtitle 6 - Attachment of Wages.

In preparing this title, the Commission concluded from its research that present Art. 47, except for those sections revised and contained in §§15-101 and 15-102, are, for the most part, pre-

empted or suspended by the Federal Bankruptcy Act, 11 U.S.C., §§1 et seq. Furthermore, even if they be constitutional in minor part, they are obsolete: there are never used; there are no rules of court governing procedures under them; and lawyers are, generally speaking, totally unfamiliar with them. These statutes were, of course, enacted primarily in 1854, when there was no Federal Bankruptcy Act. It is true that there had been an act in 1841, but it was repealed in 1843 and another short-lived act was enacted in 1867. Not until 1898 was a permanent act enacted. Thus, the Maryland statutes were enacted during an era when State insolvency statutes were the only means of providing for discharges, etc.

Certainly, those provisions of Article 47 which set up full-fledged bankruptcy proceedings, including the avoidance of transfers antedating the commencement of a liquidation proceeding, and providing for a discharge of debtors, have been found to be suspended by the Federal Bankruptcy Act. See, Boese v. King, 108 U.S. 379 (1883); International Shoe Co. v. Pinkus, 278 U.S. 261 (1929); Adrian State Bank v. Klinkhammer, 182 Minn. 57, 233 N.W. 588 (1930).

The most expressive language in favor of repeal of Art. 47 is found in In Re Storck Lumber Co., 114 Fed. 360 (D. Md. 1902). Judge Morris, of the U.S. District Court for the District of Maryland, stated the following:

"The national bankrupt act of 1898 superseded the state involvent laws, and now, when commercial and manufacturing corporations are so numerous,...it can scarcely be supposed, as the bankrupt act especially provides for proceedings against commercial corporations, that it was intended that such a corporation could commit acts of bankruptcy, and escape the provisions of the bankrupt act by applying to be wound up under the state statute, and thus defeat the operation of the bankrupt law." Id., at 361.

Accordingly, these provisions are proposed for repeal. On the other hand, the Commission would emphasize that it does not advocate the repeal of those laws regulating assignments for the benefit of creditors such as those contained in Article 16 and the BP Rules. Those statutes, which merely provide machinery for notice to creditors and procedure in judicial proceedings, have not been suspended as bankruptcy laws and are often used in Maryland. See, Mayer v. Hellman, 91 U.S. 496 (1875) as to the validity of such statutes.

For a more detailed review of this issue, see Commission Staff Memorandum No. 4, available on request at the Commission's office; see, also, Williston, "The Effect of a National Bankruptcy Law Upon State Laws," 22 Harv. L. Rev. 547, 553-5 (1909).

2. Subtitle 1 - Preferences and Priorities in Insolvency; Assignments for Benefit of Creditors.

This subtitle consolidates and restates the provisions of Art. 16, §§175, 177, and 183; Art. 24, §81; and Art. 47, §§8, 14, 15, 16, and 17.

Present Art. 16, §183A, which expressly limits present Art. 16, §§175, 177, and 183 to trusts for the benefit of creditors, is inconsistent with and unnecessary in light of the revision of these sections, as contained in §15-103 of this subtitle. Accordingly, Art. 16, §183A is proposed for repeal.

Section 15-101 is derived from Art. 47, §§8 and 14, and Art. 23, §81.

Section 15-101(c) is derived from the powers referred to in Art. 23, §81. The only change is reflected in paragraph (3) of this subsection, by increasing the time limit to set aside a lien against the property

of an insolvent from three months to four months. This is done to conform to the provision contained in paragraph (2) of this subsection; there would appear to be no valid justification for maintaining the present distinction.

Section 15-101(d) is derived from the Bankruptcy Act, 11 U.S.C. §§96, 107, and 110. These sections have been incorporated by reference in Art. 23, §81, but are particularly set forth within this section for clarity and emphasis.

The provisions of §15-102(b) and (c) are new language derived from Art. 47, §§15, 16 and 17. However, it should be noted that this section is revised to adequately reflect present practice. Subsection (b)(1), (3), (4), and (5) have been modified to indicate that the period referred to in subsection (b) is counted from the institution of the insolvency proceeding and not from the court's decree. The purpose of the change is to correct an apparent mistake in the present law; various delays in obtaining the court's decree might frustrate the purpose of priorities in insolvency and thereby cause inequitable results. Also, in subsection (b)(1), to avoid inconsistency with §15-101(c)(3) of this subtitle, the referenced period is changed from three months to four.

It should be noted that under the Federal Bankruptcy Act the order of priorities is different. The placement of taxes in the order of priorities depends on whether or not there is a discharge.

Attention is called to the revisor's note to §15-103 where the reasons for proposed repeal of many provisions of Art. 16, §175, 177, and 183 are stated in detail.

3. Subtitle 2 - Fraudulent Conveyances.

This subtitle, which is derived from Art. 39B, contains provisions of the Uniform Fraudulent Conveyances Act, approved by the National Conference on Uniform State Laws and the American Bar Association in 1918. Since the approval of the Act, 24 states have adopted it.

The Commission has refrained from making many changes to this Act, even of a purely stylistic nature, in accordance with its policy regarding Uniform Acts. Those few changes which have been made are, of course, explained in the revisor's notes. An analysis of the Act, reviewing the various cases and legal writings relating to it, is contained in Commission Staff Report No. 45, available on request at the Commission's office.

In §15-213, the present reference to the provisions relating to fraudulent conveyances from a "husband to wife" is modified to comply with Article 46 of the Declaration of Rights, which provides that "equality of rights under the law should not be abridged or denied because of sex." As modified it simply refers to fraudulent conveyances "from one spouse to the other" The Commission feels that this change in no way affects Art. 45, §§1, 2, and 11 of the Code, which are referred to in §15-213; in this regard, see, for example, Art. 45, §1, which contains, inter alia, the reference to "property passing from one spouse to the other."

Also, in §15-213, the present reference to Article 47 is changed to refer to the provisions of Subtitle 1 of this title relating to priorities and preferences in insolvency; in this regard, see the discussion beginning on page 36 of this report relative to the proposed repeal of Article 47, except as revised and contained in Subtitle 1.

4. Subtitles 3 through 6 - Assignment of Wages; Assignment of Debts; Assignment of Claims to Nonresidents; and Attachment of Wages.

The Commission has made very few changes in these subtitles, which are derived from Articles 8, 9, and 83 of the Code. All changes which are made are detailed in the appropriate revisor's notes.

H. Title 16 - Statutory Liens on Personal Property.

This title consists of various provisions relating to the creation and enforcement of liens on personal property. Except for the provisions which relate to hotel's liens, which are derived from Art. 71, §§4 and 5, the material revised comes exclusively from Article 63. The title consists of the following subtitles:

Subtitle 1 - Definitions.

Subtitle 2 - Liens on Aircraft, Boats, and Motor Vehicles.

Subtitle 3 - Artisan's Lien.

Subtitle 4 - Lien on Livestock.

Subtitle 5 - Hotel's Lien.

Subtitle 6 - Hospital's Lien.

Subtitle 7 - Veterinarian's Rights.

Except where required to avoid substantive change, the terminology and organization of these subtitles have been conformed. All changes made are detailed in the appropriate revisor's note.

It should be noted that many of the provisions of these subtitles widely differ in substance, the reasons or policies for which the Commission is unaware. The General Assembly may consider undertaking a study for purposes of unifying them or, wherever appropriate,

conforming their substantive differences.

I. Title 17 - Uniform Disposition of Unclaimed Property.

This title, which is derived from Art. 95C, §§1 through 26, contains the provisions of the Uniform Disposition of Unclaimed Property Act, which has been adopted by 18 states.

Although the sections have been slightly reordered for purposes of greater clarity and better organization, the Commission has refrained from making many changes in the text to this Act, even of a purely stylistic nature, in accordance with its policy regarding Uniform Acts. Those few changes which have been made are, of course, explained in the revisor's notes.

In §17-114 and related sections, the specifications of a value of \$10 for an item has been changed to \$25 at the request of the Abandoned Property Division of the Comptroller's Office. The Division recommends this minor change to reflect the current inflationary economy and to return the Maryland Act to conformance with the Uniform Act as enacted in most states.

Also, on the advice and recommendation of the Division, the Commission proposes that Art. 95C, §§27 through 33, which relate to postal savings system accounts, be decodified and transferred to the session laws. Federal Pub. Law 92-117, enacted in August 13, 1971, provides for the distribution of unclaimed Postal Savings System deposits to the states, thus superseding any effect that might be had by the Maryland Act. Also, the Maryland Act is not prospective in effect, since it is only applicable to postal savings accounts made before January 1, 1972; and over half of the anticipated payments under the Act have already been made. Consequently, there is no

reason to retain these sections in the Code. The continued existence of these provisions in the session laws is sufficient to satisfy the needs of the Division.

J. Title 18 - Bills of Lading and Warehouse Receipts.

This title, which is derived from Articles 14 and 14A, and Article 27, §160, contains various penal provisions dealing with bills of lading and warehouse receipts. The title consists of the following subtitles:

Subtitle 1 - Definitions

Subtitle 2 - Bills of Lading

Subtitle 3 - Warehouse Receipts

Subtitle 4 - Penalties.

Subtitle 1 contains certain ^{new} definitions of the terms used in this title. They are conformed to the definitions contained in the Uniform Commercial Code for the purpose of clarity and uniformity. For example, §18-202 of this title incorporates by reference §7-402 of this article, which latter section requires duplicate bills of lading to be identified by a "conspicuous" notation on its face. By adopting the U.C.C. definition of "conspicuous" for purposes of this title, similar notation requirements of §§18-205 and 18-302, which relate to nonnegotiable bills of lading and duplicate warehouse receipts, can readily be conformed and given a more definitive meaning, a desirable result in light of the criminal penalties imposed for violations of these sections. Since the applicable provisions of the Uniform Commercial Code were derived in part from the former Uniform Bills of Lading and Uniform Warehouse Receipts Act, the same Acts of which

Articles 14 and 14A were a part, use of the same terms and definitions would appear to have been intended in any event.

Section 18-201 consolidates and restates some of the provisions of Art. 27, §160, and the provisions of Art. 14, §44. It should be noted that the language of these two provisions, as well as the penalties prescribed for violations of each, contain certain substantive differences, although their purposes are basically the same. For example, subsection (a) of this section applies to any "person," whether or not he has an intent to defraud, and subjects him to a minimum fine of \$1000 (see §18-401(a)); on the other hand, subsection (b) of this section applies only to "carrier"-personnel who act "with intent to defraud", and, while subject to imprisonment, has no minimum penalty attached to it (see §18-401(b)). The Legislature may consider repealing one or the other of the subsections of §18-201 or consolidating the desirable features of each into one uniform prohibition. Alternatively, the Legislature may wish to amend the applicable penalty provisions.

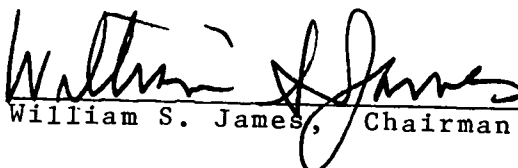
Section 18-301 consolidates the provisions of Art. 27, §160, which are not incorporated in §18-201, and the provisions of Art. 14A, §40. As with §18-201, the language of these two provisions, as well as the penalties prescribed for violation of each, contain certain substantive differences, although their purposes, too, are basically the same.

V. CONCLUSION.

The Commission does not suggest that all of the issues raised in this report for legislative consideration need be resolved during

the 1975 Legislative Session. Some of them may require further study and might appropriately be handled by the Legislative Council. These matters are noted primarily as an aid in determining what matters should be given further consideration.

Respectfully submitted,


William S. James, Chairman


Avery Eisenstark, Director

